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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 STEVE E. BARRON, et al.,

9 Plaintiffs,

v.

10 AMERICAN FAMILY MUTUAL
11 INSURANCE COMPANY,

12 Defendant.

CASE NO. C16-5576 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT

13 This matter comes before the Court on Defendant American Family Mutual
14 Insurance Company's ("American Family") motion for summary judgment (Dkt. 44) and
15 Plaintiffs Steve E. Barron, Christine L. Hillestad, Marc W. Hillestad, Raymond Owens,
16 Tammy Owens, and Frank E. Schoen's ("Plaintiffs") motion for partial summary
17 judgment (Dkt. 55). The Court has considered the pleadings filed in support of and in
18 opposition to the motions and the remainder of the file and hereby rules as follows:

19 **I. PROCEDURAL HISTORY**

20 On June 28, 2016, Plaintiffs filed a class action complaint against American
21 Family asserting numerous causes of action. Dkt. 1. All of the causes of action are based
22 on the theory that American Family failed to pay the actual cash value for damaged items

1 because American Family improperly depreciated the value of these items based solely
2 on the age of the items. *Id.* ¶¶ 29, 30.

3 On February 15, 2017, American Family filed a motion for summary judgment.
4 Dkt. 44. On March 6, 2017, Plaintiffs responded. Dkt. 53. On March 9, 2017, Plaintiffs
5 filed a cross-motion for summary judgment. Dkt. 55. On March 10, 2017, American
6 Family replied to Plaintiffs' response. Dkt. 56. On March 27, 2017, American Family
7 responded to Plaintiffs' motion. Dkt. 59. On March 31, 2017, Plaintiffs replied. Dkt. 60.

8 **II. FACTUAL BACKGROUND**

9 Plaintiffs entered into individual contracts of insurance with American Family. It
10 is undisputed that each contract obligated American Family to pay the insured the
11 "Actual Cash Value" ("ACV") of damaged property in certain circumstances. Dkt. 44 at
12 34; Dkt. 53 at 3. The policies define ACV as "the amount it costs to repair or replace
13 property with property of like kind and quality less depreciation for physical deterioration
14 and obsolescence." *Id.*

15 **III. DISCUSSION**

16 As a threshold matter, the parties appear to be ships passing in the night.
17 American Family seeks a ruling that straight-line age-based depreciation is appropriate
18 for every instance of attributable depreciation while Plaintiffs seek a ruling that straight-
19 line age-based depreciation can never be a factually accurate determination of
20 depreciation. Based on the current record, the true answer lies somewhere in the middle
21 of these positions. For example, age may be the only relevant factor in depreciating an
22 item, whereas in other situations age has no relevance whatsoever in determining an

1 item's obsolescence. Accordingly, the issue is not amenable to resolution as a matter of
2 law and, in the absence of further evidence, may only be determined on an item-by-item
3 basis.

4 **A. Summary Judgment Standard**

5 Summary judgment is proper only if the pleadings, the discovery and disclosure
6 materials on file, and any affidavits show that there is no genuine issue as to any material
7 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
8 The moving party is entitled to judgment as a matter of law when the nonmoving party
9 fails to make a sufficient showing on an essential element of a claim in the case on which
10 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
11 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
12 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
13 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
14 present specific, significant probative evidence, not simply "some metaphysical doubt").
15 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
16 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
17 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
18 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d
19 626, 630 (9th Cir. 1987).

20 The determination of the existence of a material fact is often a close question. The
21 Court must consider the substantive evidentiary burden that the nonmoving party must
22 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477

1 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
2 issues of controversy in favor of the nonmoving party only when the facts specifically
3 attested by that party contradict facts specifically attested by the moving party. The
4 nonmoving party may not merely state that it will discredit the moving party's evidence
5 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
6 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
7 nonspecific statements in affidavits are not sufficient, and missing facts will not be
8 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

9 **B. ACV**

10 The Court construes an insurance policy as a whole, giving the policy a "fair,
11 reasonable, and sensible construction as would be given to the contract by the average
12 person purchasing insurance." *Amer. Nat. Fire Ins. Co. v. B & L Trucking and Constr.*
13 *Co., Inc.*, 134 Wn.2d 413, 427 (Wn. 1998) (internal quotations omitted). If the language
14 is clear and unambiguous, the Court must enforce it as written. *Id.* at 429. If the clause is
15 ambiguous, the Court may look to extrinsic evidence of the parties' intent to resolve the
16 ambiguity. *Id.* The Court resolves any remaining ambiguities against the drafter-insurer
17 and in favor of the insured. *Id.* A clause is ambiguous when, on its face, it is fairly
18 susceptible to two reasonable interpretations. *Id.* When the Court relies on inferences
19 drawn from extrinsic evidence, contract interpretation is a question of fact. *Viking Bank v.*
20 *Firgrove Commons 3, LLC*, 183 Wn. App. 706, 712 (2014). Absent disputed facts, the
21 legal effect of a contract is a question of law. *Id.*

1 In this case, the relevant contract language is clear and unambiguous. American
2 Family may calculate depreciation by considering “physical deterioration and
3 obsolescence.” Merriam-Webster defines “obsolescence” as “a loss in the utility or value
4 of property that results over time from intrinsic limitations (as outmoded facilities) or
5 external circumstances.” <https://www.merriam-webster.com/dictionary/obsolescence>
6 (last visited April 26, 2017). “In this state, legal technical meanings have never trumped
7 the common perception of the common man.” *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113
8 Wn.2d 869, 881 (1990). Accordingly, the Court agrees with American Family that the
9 common definition of obsolescence confers the idea of property losing value over time
10 and depreciation by obsolescence may include age as a factor. In other words, the
11 contract language does not preclude American Family from considering age when
12 calculating depreciation. Therefore, on the issue of contract interpretation, the Court
13 grants American Family’s motion and denies Plaintiffs’ motion.

14 The remaining issue is a matter of fact whether the age of a piece of damaged
15 property directly correlates with obsolescence depreciation. American Family argues that
16 it is entitled to summary judgment on all of Plaintiffs’ claims. Dkt. 44 at 17. Plaintiffs,
17 however, assert that they are “entitled to payment under the insurance policy for the full
18 amount to which each class member is entitled under the personal-property coverage.”
19 Dkt. 10, ¶ 55. They argue that each “policy allows depreciation, but the insurance
20 company must ground any depreciation in the actual physical deterioration or
21 obsolescence of the item at the time of loss,” and “[i]f the passage of time (age) or other
22 factors did not cause physical deterioration or obsolescence in an item, there is no

1 depreciation.” Dkt. 60 at 2. The Court agrees on both points. More importantly,
2 American Family has failed to show that no questions of fact exist as to every item
3 claimed by Plaintiffs. Therefore, to the extent that American Family has failed to
4 properly compensate Plaintiffs under each contract of insurance, the Court denies
5 American Family’s motion on all of Plaintiffs’ claims.

6 **IV. ORDER**

7 Therefore, it is hereby **ORDERED** that American Family’s motion for summary
8 judgment (Dkt. 44) is **GRANTED in part** and **DENIED in part** and Plaintiffs’ motion
9 for partial summary judgment (Dkt. 59) is **DENIED**.

10 Dated this 27th day of April, 2017.

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13 **BENJAMIN H. SETTLE**
United States District Judge

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